Supreme Court, U. S.
FILED
JAN 3 1973
MICHAEL RODAK, JR., CLERK

APPENDIX.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972.

No. 72-953

PEYTON BERBLING (W. C. SPOMER, SUCCESSOR TO PEYTON BERBLING), ET AL.,

Petitioners,

vs.

EZELL LITTLETON, ET AL.,

Respondents.

WILLIAM J. SCOTT,
Attorney General of the State of Illinois,
160 North La Salle Street, Room 900,
Chicago, Illinois 60601 (793-3500),
Attorney for Petitioners.

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APPENDIX

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit

SEPTEMBER TERM, 1971 — JANUARY SESSION, 1972

No. 71-1395

EZELL LITTLETON, MANKER HARRIS, JAMES WILSON, CARL HAMPTON, HAZEL JAMES, WALTER GARRETT, CHARLES KOEN, FRANK WASHINGTON, CURTIS JOHNSON, CHERYL GARRETT, YVONDA TAYLOR, RUSSELL DEBERRY, ROBERT MARTIN, PRESTON EWING, JR., JAMES BROWN, HERMAN WHITFIELD, WALLACE WHITFIELD, LEROY LAMBERT, by his Father and Next Friend, HOBERT LAMBERT, MORRIS GARRETT, by his Father and Next Friend, LEVI GARRETT, individually and as representatives of a class,

Plaintiffs-Appellants,

v.

PEYTON BERBLING, individually and as State's Attorney for Alexander County, Illinois, EARL SHEPHERD, individually and as investigator for Peyton Berbling, CARL MEISENHEIMER, as Police Commissioner of the City of Cairo, Illinois, MICHAEL O'SHEA, as Magistrate of the Circuit Court for Alexander County, Illinois, and DOROTHY SPOMER, as Associate Circuit Judge for Alexander County, Illinois,

Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Illinois.

No. 70-103

WILLIAM G. JUERGENS, *Judge.*

Argued March 1, 1972—Decided October 6, 1972

Before SWYGERT, *Chief Judge,* PELL, *Circuit Judge,* and DILLIN, *District Judge.**

PELL, *Circuit Judge.* This appeal is from a dismissal by the district court of plaintiffs' amended complaint. Plaintiffs brought this action under 42 U. S. C. §§ 1981, 1982, 1983 and 1985, seeking in addition to damages, injunctive relief for claimed deprivations, under color of law, custom and usage of Cairo, and Alexander County, Illinois, of various rights and immunities secured to plaintiffs and members of their class under the Constitution of the United States and the above-named sections of Title 42. Jurisdiction was founded on 28 U. S. C. §§ 1331 and 1343.

This court, in reviewing the district court's dismissal of plaintiffs' amended complaint, must construe the amended complaint liberally and consider all of the factual allegations to be true, resolving any doubts in plaintiffs' favor. *Jung* v. *K. & D. Mining Co.,* 260 F. 2d 607, 608 (7th Cir. 1958); *Contract Buyers League* v. *F & F Investment,* 300 F. Supp. 210, 214 (N. D. Ill. 1969), *aff'd sub nom. Baker* v. *F & F Investment,* 420 F. 2d 1191 (7th Cir. 1970), *cert. denied,* 400 U. S. 821. We are not here concerned whether the plaintiffs will be able to adduce competent proof of their allegations.

Plaintiffs, in substance, charge that the defendants, functionaries of Alexander County, have systematically applied the state criminal laws so as to discriminate against plaintiffs and their class on the basis of race, interfering thereby with the free exercise of their constitutional rights.

The named plaintiffs, with two exceptions, are black citizens of Cairo. The plaintiffs, allegedly financially poor

* District Judge S. Hugh Dillin of the Southern District of Indiana is sitting by designation.

persons, name as their class all other persons similarly situated, presumably as to race and poverty.

Defendant Berbling is the State's Attorney for Alexander County. Defendant O'Shea at the time of the commencement of this suit was a Magistrate of the Circuit Court for Alexander County and on July 1, 1971, became an Associate Judge of Alexander County. Defendant Spomer is an Associate Judge of the Circuit Court for Alexander County. Defendant Shepherd is an investigator for defendant Berbling, but is not himself an Assistant State's Attorney.

As to each of the defendants, it is alleged that since the early 1960's, black citizens of Cairo have been actively seeking equal opportunity and treatment in such areas as employment, housing, education and ordinary day-to-day relations with white citizens and officials of Cairo. One of the important manifestations of the equality quest is the participation by the plaintiffs and their encouragement of others to do likewise in an economic boycott of local merchants deemed to have engaged in racial discrimination. The equality quest allegedly has generated and continues to generate substantial tension and antagonism from the white citizens and officials. It appears that in addition to the boycott there were peaceful demonstrations.

We now turn to the allegations pertaining to particular defendants, treating such charges as true for the purpose of this appeal.

BERBLING CONDUCT

Berbling engages in a pattern and practice of refusing to permit black citizens to give evidence of criminal conduct committed by white citizens against black citizens. He refuses to initiate criminal proceedings against white citizens arising out of assaults and batteries committed

by them against black citizens. He refuses to proceed on black citizen complaints by information or complaint but submits such matters to a grand jury in those instances in which he permits complaints to be filed. He interrogates the black citizens before the grand jury with the purposeful intent of depriving the black citizens of their right to present their evidence to the grand jury. In some instances before the grand jury, he declines to interrogate the black complainants at all. When white persons are prosecuted on the basis of complaints by plaintiffs, Berbling engages in a practice of inadequately prosecuting in order to lose the cases or to settle them on terms more favorable than those accorded black persons. He engages in the practice of requesting or recommending greater bonds and sentences in cases involving black persons than those of white persons. He engages in a practice of bringing significantly more serious charges against plaintiffs for conduct which would result in no charge or a minor charge against white persons.

All of the above alleged practices are assertedly carried on by Berbling "wilfully and maliciously with the intent (a) to deprive plaintiffs of the benefits of the criminal justice system, (b) to deprive plaintiffs of their right to give evidence against those who threaten their security, peace and tranquility and to deprive plaintiffs of their right to hold property to the same extent as is enjoyed by white citizens, and (c) to deter plaintiffs from engaging in a peaceful boycott and other activities protected by the First Amendment."

Specific instances of illustrative supporting conduct pertaining to named individual plaintiffs are set forth in the amended complaint.

SHEPHERD CONDUCT

He engages in a pattern and practice of refusing to permit plaintiffs to give evidence against white persons respecting acts threatening the personal safety of plaintiffs. The illustrative specific incident, however, is that Shepherd refused to permit one of the plaintiffs, because of her race, to file criminal charges against a white man who had kicked her in the stomach while she was peacefully demonstrating "against the racially discriminatory practices of merchants and public officials."

The example in the complaint seems questionably illustrative of the allegation with regard to the discriminatory pattern and practice and, in any event, there would seem to be some question of Shepherd's authority to decline to file criminal charges as he, as we understand it, was an investigator only.

SHEPHERD and BERBLING CONDUCT

A conspiracy is charged against Berbling and Shepherd in that they engage in conduct that prevents plaintiffs because of their race from giving evidence against white persons respecting acts threatening plaintiffs' personal safety.

The illustrative example was the same incident alleged as to Shepherd individually except that here it is alleged that Shepherd, "at Berbling's direction, and because of her race, refused to allow" the filing of the complaint.

Questions existing here also arise from the specific illustration utilized.